

Message Text

PAGE 01 STATE 115300

61

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FM SECSTATE WASHDC

TO AMEMBASSY WELLINGTON

INFO AMEMBASSY ROME

ADC ENT AFB CO

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C O N F I D E N T I A L STATE 115300

E.O. 11652:GDS

TAGS: MARR, TSPA, NZ

SUBJECT: CIVILIAN OPERATION OF BAKER-NUNN STATION

REF: WELLINGTON 991

1. REFTEL INDICATES THAT MAJOR PROBLEM FOR GNZ IN GRANTING TAX EXEMPTIONS TO US CONTRACTOR OPERATING BAKER-NUNN STATION IS LACK OF BASIS FOR EXEMPTION UNDER NEW ZEALAND LAW AND INFEASIBILITY OF OBTAINING NEW LEGISLATION FOR SUCH PURPOSE. WE ASSUME, THEREFORE, THAT GNZ WOULD BE MORE FORTHCOMING IN GRANTING TAX EXEMPTIONS IF PLAUSIBLE BASIS COULD BE FOUND CONSISTENT WITH NEW ZEALAND LAW.

2. WE ASSUME GNZ HAS IMPLEMENTED 1951 DOUBLE TAXATION CONVENTION (TIAS 2360). THIS AGREEMENT WOULD SEEM TO PROVIDE AN ADEQUATE BASIS FOR EXEMPTIONS FROM NEW ZEALAND CONFIDENTIAL

PAGE 02 STATE 115300

INCOME TAX FOR A USG CONTRACTOR. ARTICLE III, PARA (1) OF THE 1951 CONVENTION PROVIDES: "THE INDUSTRIAL OR COMMERCIAL PROFITS OF A UNITED STATES ENTERPRISE SHALL NOT BE SUBJECT TO NEW ZEALAND TAX UNLESS THE ENTERPRISE

IS ENGAGED IN TRADE OR BUSINESS IN NEW ZEALAND THROUGH A PERMANENT ESTABLISHMENT SITUATED THEREIN." ARTICLE X, PARA (1) OF THE CONVENTION PROVIDES: "REMUNERATION, WAGES OR SALARY (OTHER THAN PENSIONS) PAID BY THE GOVERNMENT OF THE UNITED STATES FOR SERVICES RENDERED TO THE

NITED STATES IN THE DISCHARGE OF GOVERNMENTAL FUNCTIONS TO AN INDIVIDUAL WHO IS A CITIZEN OF THE UNITED STATES OR WHO IS ORDINARILY RESIDENT IN NEW ZEALAND SOLELY FOR THE PURPOSE OF RENDERING SUCH SERVICES SHALL BE EXEMPT FROM NEW ZEALAND TAX."

3. IN OUR VIEW ARTICLE III, PARA (1) OF CONVENTION PROVIDES BASIS FOR EXEMPTION FROM NEW ZEALAND TAXES ON PROFITS OF US FIRM DERIVED FROM CONTRACT FOR O AND M OF BAKER-NUNN STATION, SINCE PRESENCE IN NEW ZEALAND SOLELY FOR PERFORMANCE OF SERVICES TO USG WOULD NOT CONSTITUTE "TRADE OR BUSINESS IN NEW ZEALAND," AND MT. JOHN FACILITY UNDER CONTROL OF USG WOULD NOT CONSTITUTE A "PERMANENT ESTABLISHMENT" OF THE CONTRACTOR WITHIN THE MEANING OF ARTICLE II, PARA (1) (O) OF THE CONVENTION. IN THE ALTERNATIVE, IT WOULD SEEM THAT SINCE DEFINITION OF "INDUSTRIAL OR COMMERCIAL PROFITS" IN ARTICLE II, PARA (1)(N) INCLUDES ONLY "MANUFACTURING, MERCANTILE, MINING, FINANCIAL AND FARMING PROFITS" AND EXCLUDES "REMUNERATION FOR PERSONAL SERVICES," EARNINGS OF CONTRACTOR WOULD BE EXEMPT FROM NEW ZEALAND TAX UNDER PROVISIONS OF ARTICLE X, PARA (1), ON BASIS THAT SUCH EARNINGS WOULD BE "REMUNERATION PAID BY THE GOVERNMENT OF THE UNITED STATES FOR SERVICES RENDERED TO THE UNITED STATES IN THE DISCHARGE OF GOVERNMENTAL FUNCTIONS." ARTICLE X, PARA (1) WOULD ALSO SEEM TO PROVIDE BASIS FOR EXEMPTION FROM NEW ZEALAND TAX OF SALARIES OF US CITIZEN EMPLOYEES OF CONTRACTOR.

4. UNLESS OBJECTION PERCEIVED, EMBASSY IS REQUESTED TO PRESENT ABOVE RATIONALE TO APPROPRIATE GNZ
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PAGE 03 STATE 115300

AUTHORITIES AND REPORT REACTION. KISSINGER

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